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Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 65/105, concerning Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem. The report examines themes identified in resolution 65/105, including the right to life and security; displacement and other practices affecting the demographic composition of the Occupied Palestinian Territory; the firing of rockets and mortars against Israeli civilian areas resulting in loss of life and injury; restrictions on the freedom of movement and goods; and arrests and detention.

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I. Introduction

1. The present report addresses progress made in the implementation of General Assembly resolution 65/105, entitled "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem". The period covered is 20 August 2010 to 30 June 2011. The information contained in the report is based on monitoring and other information-gathering activities carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR)[1] and other United Nations entities in the Occupied Palestinian Territory. It also contains information obtained from Israeli, Palestinian and international non-governmental organizations (NGOs), human rights defenders and media sources.

2. The report examines the following themes identified in resolution 65/105:

(a) Right to life and security, in particular the killing and injury of civilians;

(b) Displacement and other practices affecting the demographic composition of the Occupied Palestinian Territory;

(c) Firing of rockets and mortars against Israeli civilian areas resulting in loss of life and injury;

(d) Restrictions on the freedom of movement and goods;

(e) Arrests and detention.

3. It is noted that several themes identified in resolution 65/105 are addressed in separate reports of the Secretary-General submitted to the General Assembly at its sixty-sixth session. These include the theme of Israeli settlements in the Occupied Palestinian Territory, which is addressed in the report of the Secretary-General pursuant to General Assembly resolution 65/105 (A/66/364) and the theme of the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories, addressed in the report of the Secretary-General (A/66/362) pursuant to General Assembly resolution 65/103.

4. It is further noted that the human rights situation in the Occupied Palestinian Territory is reviewed in the report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 (A/HRC/16/71). The situation in the Occupied Palestinian Territory is also reviewed in other recent reports, including the status of implementation of the recommendations of the United Nations Fact-Finding Mission on the Gaza Conflict (see A/HRC/12/48), which is addressed in the report of the Secretary-General submitted pursuant to Human Rights Council resolution 16/32 (A/HRC/18/49).

[1] OHCHR monitoring of individual cases involves interviews with victims and witnesses of alleged violation(s) and, in many cases, site visits to the location where the alleged violation(s) occurred.

II. Implementation of resolution 65/105

A. Right to life and security

5. According to information gathered by United Nations entities in the Occupied Palestinian Territory, the total number of Palestinians killed by Israeli security forces during the reporting period was 91 persons, 50 of whom were believed to be members of armed groups. A total of 1,592 Palestinians were reportedly injured, of which 1,528 were civilians not affiliated with an armed group. During the same period, 11 Israeli civilians were reportedly killed and 40 wounded.[2]

Killings and injuries in the course of hostilities

6. The majority of casualties related to armed conflict occurred in Gaza. According to information gathered by United Nations entities, Israeli-Palestinian conflict-related violence in Gaza claimed the lives of 80 Palestinians in Gaza and 2 Israelis in the Gaza vicinity.[3] This included 30 Palestinian civilians and 1 Israeli civilian.[4] OHCHR monitored many cases in which Palestinians civilians not taking part in hostilities were killed.

7. The most intense escalation of incidents related to armed conflict since the end of the Israeli Operation Cast Lead occurred during April. The Israeli Defense Forces (IDF) frequently attacked targets across Gaza, striking military as well as civilian objects. In April, those attacks resulted in the death of 23 Palestinians, including 9 civilians, 2 of whom were children, and 64 injured, including 57 civilians, 17 of whom were children.[5] Also in April, Palestinian armed groups fired 120 rockets and 92 mortar shells into Israeli territory,[6] which resulted in the death of a 16-year-old Israeli boy and the injury of two Israeli civilians.[7]

8. On 2 September 2010, two Israeli tank shells landed in the Shurrab area of Gaza, killing an elderly Palestinian man and two Palestinian children. The three had been working on their farm and were not taking part in hostilities. It was reported that they were targeted because they were thought to be aiming a rocket launcher at the Green Line fence, and in the general direction of an IDF patrol.[8] In another case,

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[2] Statistics obtained from the Office for the Coordination of Humanitarian Affairs. These are overall numbers for the reporting period. Statistics on deaths and injuries provided in the present report concern specific periods or geographic areas or themes and are included in the overall number of casualties.

[3] Figures obtained from the Office for the Coordination of Humanitarian Affairs, 27 June 2011.

[4] Ibid. The Israeli victim was killed in Israel from a missile fired from Gaza.

[5] Office for the Coordination of Humanitarian Affairs, *The Humanitarian Monitor*, April 2011, http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2011_05_19_english.pdf.

[6] According to Department of Safety and Security, Communication dated on 26 June and 9 July 2011.

[7] Office for the Coordination of Humanitarian Affairs, *The Humanitarian Monitor*, April 2011, http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2011_05_19_english.pdf.

[8] OHCHR monitored this case and sent a letter to the Israeli authorities in December 2010 requesting information on it. At the time of drafting, no response had been received. The Israeli media quoted military sources as confirming that the three victims were not militants. See *Haaretz*, 15 September 2010, "IDF probe: Palestinians killed by IDF shelling were not militants," available at http://www.haaretz.com/print-edition/news/idf-probe-palestinians-killed-by-idf-shelling-were-not-militants-1.313855.

on 18 January 2011, IDF targeted a 17-year-old boy who was removing an object from the site of an explosion which had occurred a few hours earlier. In addition to shooting the boy, IDF fired a tank shell, which resulted in the injury of three civilians who were in the same area collecting rubble.[9]

9. On 8 April 2011, an IDF missile struck a house in the Abassan Al Kabira area of Gaza, killing a mother and her daughter, and injuring two girls who were sitting in the courtyard. Witnesses interviewed by OHCHR stated that the immediate area in which the house is located had never been used by armed groups to launch mortar shell or rocket attacks.[10]

10. On 22 March 2011, Palestinian militants fired three mortar shells towards IDF soldiers stationed at the eastern area of the Green Line fence around Gaza. The shells caused no physical injuries or damage. In response, IDF fired four or five mortar shells, one of which struck a house in the Al-Tufah neighbourhood of Gaza City, killing 4 Palestinian civilians, including 2 children, and wounding 12 others.[11] According to United Nations sources, earlier the same day IDF had conducted an incursion into the same area[12] and should have been aware of the presence of civilians.

11. The killing of civilians not taking part in hostilities violates the right to life as guaranteed by article 6 of the International Covenant on Civil and Political Rights. These cases also raise questions regarding IDF respect for the basic provisions of international law when planning and carrying out an attack; these provisions include those relating to the distinction between civilians and combatants and between civilian objects and military targets, proportionality between the expected military advantage of the attack in relation to potential injury to civilians, and the need to take precautions when evaluating the effects of the attack and choosing the weapons to be used. According to media reports some of these cases have been the subject of initial reviews by IDF.[13] However, no information meeting international standards of thoroughness, independence, and impartiality was available regarding any investigations into these cases.

Killings and injuries during operations of Israeli security forces

12. Excessive use of force by Israeli security forces in their policing operations in the West Bank continued to be a cause for concern, with unarmed civilians having been injured and killed during the reporting period. OHCHR monitored the cases of four unarmed Palestinians who were killed at checkpoints during routine patrols or during arrest operations.

13. In some cases unarmed civilians were killed during night raids on their houses, where IDF soldiers surrounded a house and entered without prior warning. On 17 September 2010, several dozen IDF soldiers entered the Nur Shams refugee camp early in the morning and raided 12 houses. One Palestinian man was killed and eleven were detained. In one of the targeted houses, Eyad As'ad Ahmed Abu-

[9] OHCHR monitored the case.

[10] OHCHR monitored the case.

[11] According to Department of Safety and Security sources.

[12] Ibid.

[13] Haaretz on 15 September. IDF probe: Palestinians killed by IDF shelling were not militants, http://www.haaretz.com/print-edition/news/idf-probe-palestinians-killed-by-idf-shelling-were-not-militants-1.313855.

Shelbayeh was sleeping. He was unarmed when the soldiers broke into the house, rushed to his bedroom and shot him at the foot of his bed. According to the information available to OHCHR at the time of finalizing this report, no investigation had been opened into the case.[14] In another case, in the early hours of 7 January 2011, dozens of IDF troops surrounded a house in Hebron, broke into the second floor of the house, rushed to a bedroom and opened fire on Mr. Qawasmeh, a 66-year-old man who was asleep in his bed. According to accounts collected by OHCHR, when the soldiers realized that they had raided the wrong apartment, they proceeded to the first floor of the house and arrested a man who was apparently the intended target. IDF announced that it would investigate the killing and, on 19 January 2011, expressed deep regret and announced that it would terminate the career of one the soldiers involved.[15]

14. In a number of incidents, Israeli security forces have opened fire on unarmed civilians while they were crossing checkpoints or during routine patrols. On 4 October 2010, a group of unarmed men had allegedly climbed over the Wall in the vicinity of Zaim village, in order to reach their workplaces. An Israeli Border Police patrol gave chase and one of the men was shot and killed. According to media reports, the Police Investigation Department of the Ministry of Justice initiated an investigation.[16] At the time of finalizing the present report no information on progress in this investigation had been received.[17] In another case, a man crossing the Al-Hamra checkpoint was shot and killed on 2 January 2011. He was about to pass through the checkpoint when a soldier shouted at him in Hebrew and shot him in the leg. The man fell to the ground. When he got up on one leg with his hands up, other soldiers at the checkpoint opened fire, which resulted in his death. He was unarmed. IDF announced three weeks later that an operational investigation had concluded that the soldiers had acted in conformity with rules of engagement.[18]

15. The use of firearms against unarmed persons raises serious concerns with regard to the open-fire regulations and training received by the Israeli security forces. In the West Bank, occupying forces act in a law-enforcement capacity. They are bound by article 6 of the International Covenant on Civil and Political Rights and should act in accordance with the Basic Principles for the Use of Force and Firearms by Law Enforcement Officials. In this context, the use of firearms is authorized in extremely limited circumstances, namely, self-defence or defence of others against imminent threat of death or serious injury and only if less extreme means are insufficient.[19] The fact that, in the above-mentioned cases the victims

[14] OHCHR sent a letter to the Israeli authorities in December 2010 requesting information on this case. As at the finalization of this report, no response had been received.

[15] Israeli Defense Forces, Press Release, "IDF Terminates Military Career of Soldier Involved in Hebron Incident", 19 January 2011. http://dover.idf.il/IDF/English/Press+Releases/2011/01/1901.htm.

[16] http://www.jpost.com/Israel/Article.aspx?id=190096&R=R2http://www.reuters.com/article/idUSLDE69208V20101003.

[17] OHCHR sent a letter to the Israeli authorities in December 2010 requesting information on this case. At the time of finalization of this report, no response had been received.

[18] Israeli Defense Forces, Press Release, Investigation of "Bekaot" Crossing Incidents Concluded, 24 January 2011, http://dover.idf.il/IDF/English/Press+Releases/2011/01/2401.htm. OHCHR sent a letter to the Israeli authorities in January 2011 requesting information on this case. At the time of finalization of the present report, no response had been received.

[19] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, principle 9.

were unarmed, and in two cases asleep in their beds, indicates that Israeli security forces need to urgently reassess applicable open-fire regulations and relevant training, with a view to preventing such incidents.

16. Tactics used by IDF in such law enforcement operations are also cause for concern. The practice of covertly breaking into a house during the night to make arrests increases the likelihood of incidents of excessive use of force. Referring to different contexts, the Special Rapporteur on extrajudicial, summary or arbitrary executions qualified night raids as "always dangerous for civilians".[20] Entering a house without warning, in particular during the night, creates a situation whereby soldiers are unable to clearly judge the actions or intentions of the inhabitants. This unnecessarily heightens the likelihood that an action will be misperceived by soldiers. It is noted that IDF has used an approach to such operations that presents fewer risks to the inhabitants of the home, namely surrounding a house, discretely announcing their presence, advising the inhabitants to come out, and detaining the targeted individual.[21]

17. Thorough, prompt, independent and impartial investigations of the use of firearms by law enforcement officials, and the taking of appropriate judicial and disciplinary sanctions when necessary, are essential to ensure the accountability of security forces. While IDF and Israeli police have opened investigations in a few cases, IDF investigations have been limited to so-called "operational debriefings".[22] These types of investigations do not meet international standards and were criticized by the Fact-Finding Mission on the Gaza Conflict, which concluded that operational debriefing is not an appropriate tool to conduct investigations of allegations of serious human rights violations.[23] As for the investigations into the actions of police, the Human Rights Committee has expressed concerns with regard to the independence of the oversight mechanisms.[24]

18. On 6 April 2011, IDF announced that it had implemented a new investigation policy in the West Bank, according to which every case in which "uninvolved" civilians are killed by IDF is to be automatically investigated by the Military Police. Since 2000, cases had been referred to the Military Police only if deemed necessary by a fact-gathering enquiry,[25] which is mainly informed through the "operational debriefings". While this is a positive development, certain situations in which violations of the right to life may occur are excluded, namely, when the civilian killed is alleged by IDF to be "involved" or that the death occurred during an exchange of fire. An automatic investigation by the Military Police has been specifically excluded in cases occurring in Gaza.[26]

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[20] Report of the Special Rapporteur on his mission to Afghanistan, A/HRC/11/2/Add.4, para. 10.

[21] Information gathered by OHCHR.

[22] In para. 20 of its report (A/HRC/12/48), the Mission stated: "The debriefings are reviews of incidents and operations conducted by soldiers from the same unit or line of command together with a superior officer. They are meant to serve operational purposes."

[23] A/HRC/12/48, para. 1819. See also A/HRC/16/24 and A/HRC/15/50.

[24] Human Rights Committee, concluding observations on Israel, CCPR/C/ISR/CO/3, para. 12.

[25] Israeli Defense Forces, Press Release, IDF Military Advocate General Implements New Investigation Policy Regarding Palestinian Casualties from IDF Fire in Judea and Samaria, 6 April 2011, http://dover.idf.il/IDF/English/Press+Releases/2011/04/0602.htm.

[26] Israeli Defense Forces, Press Release, 6 April 2011.

19. Israel has an obligation to investigate all alleged violations of the right to life "promptly, thoroughly and effectively through independent and impartial bodies".[27] Armed conflict and occupation do not release Israel from that duty.[28] According to data collected by an Israeli NGO, approximately 94 per cent of criminal investigations launched by IDF against soldiers suspected of illegal behaviour towards Palestinians are closed without an indictment. The same NGO found that even when a soldier is convicted, sentences are inappropriately lenient.[29]

Excessive use of force in the policing of demonstrations

20. During the reporting period, weekly demonstrations took place in various locations in the West Bank, including East Jerusalem, and occasionally at the Green Line fence in Gaza. The use of excessive force against unarmed demonstrators was regularly reported, with tear gas being intensively used by Israeli security forces and tear gas canisters being fired as projectiles at protesters, resulting in severe injuries. Live ammunition was also used against unarmed protesters.

21. For example, on 15 April 2011, in Bil'in, approximately 500 protesters gathered close to the Wall separating the village from their lands. As a group of about 20 protesters approached the Wall, one of the protesters reportedly heard an Israeli officer order a soldier to fire. The soldier took aim at the victim and fired. The protester was hit with a bullet in the shoulder and another in the foot.[30] In another case, in early June 2011, hundreds of Palestinians from the village Deir Qaddis headed to an agricultural area north of the village to protest against two Israeli bulldozers working on expanding the Israeli Nili settlement. Before arriving at the site, IDF soldiers blocked protestors' access to the area. Clashes erupted between the demonstrators and IDF, who had been joined by Israeli Border Police. With 50 metres of separation between the demonstrators and the security forces, one member of the security forces fired 0.22 rounds[31] at the crowd, wounding two young men. One was hit with two bullets in the chest and pelvis.[32]

22. On 15 May 2011 clashes erupted across the Occupied Palestinian Territory between IDF and Palestinian demonstrators who were commemorating the anniversary of what Palestinians refer to as *Al Nakba* ("the catastrophe"). During the clashes, IDF used live ammunition, rubber-coated bullets, and teargas to disperse demonstrators, resulting in the injury of more than 100 civilians.

23. In Gaza, hundreds of Palestinians gathered at the Beit Hanoun junction on that day and marched towards the Erez crossing in protest against the occupation. IDF

[27] Human Rights Committee, general comment No. 31: "The Nature and Scope of the General Legal Obligation Imposed on States Parties to the Covenant", para. 15.

[28] See the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2006/53, para. 36. The Human Rights Committee, in its general comment No. 29: States of Emergency (article 4), concluded that, in order to ensure the protection of rights which are non-derogable (which include the right to life), they must be secured by procedural safeguards (see CCPR/C/21/Rev.1/Add.11, para. 15).

[29] Yesh Din, http://www.yesh-din.org/cat.asp?catid=2.

[30] OHCHR monitored this case on 11 May 2011.

[31] In a letter to the NGO B'Tselem, the IDF Judge Advocate General confirmed that IDF does not classify this type of ammunition as means for dispersing demonstrations. http://www.btselem.org/download/20090702_jag_response_to_letter_on_use_of_ruger_rifles_against_demonstrators_eng.pdf.

[32] OHCHR monitored this case.

fired sound bombs and warning shots to the east and west of Salah Ed-Din Street to disperse the protesters. Demonstrators continued marching toward Erez, reaching 75 metres from the wall erected along this section of the Green Line. IDF stationed at the crossing then fired live ammunition, rubber-coated bullets, and tear gas at the crowd. Live fire appears to have been aimed at the lower limbs of the protesters. The IDF actions injured 125 demonstrators, including 32 minors, 5 women, and 3 journalists. Out of these, 13 suffered serious wounds caused by gunshots and were treated at Gaza hospitals. A further 77 suffered light wounds caused by live ammunition and fragment of bullets, and were also admitted to hospitals. The remaining demonstrators suffered light injuries caused by rubber-coated bullets and tear gas.[33] In examining the IDF response to the demonstration, the need to use firearms in self-defence seems unclear. This is particularly so because IDF soldiers at the Erez crossing are positioned either behind fortified concrete walls that are several metres high or inside fortified watch towers, making it difficult for anybody, especially unarmed individuals, to threaten their lives or that of others, which is the principal criterion authorizing the use of live ammunition.

24. The use of firearms is not an appropriate means of riot control against unarmed demonstrators, and their use in this context is not in conformity with international standards on the use of firearms by law enforcement officials. The use of excessive force against demonstrators has a negative impact on the rights of Palestinians to freedom of expression and freedom of assembly, rights which are guaranteed by the International Covenant on Civil and Political Rights. In the case of Gaza, hostilities between armed groups and IDF often erupt with rockets and mortars regularly fired against IDF positions along the Green Line fence, rendering law enforcement operations, such as controlling a demonstration, more complex. Nevertheless, this does not change Israel's obligations with respect to demonstrators. Even in armed-conflict situations, the use of live ammunition against civilians violates the prohibition against targeting civilians unless they are directly participating in hostilities. Participation in a demonstration or presence in a restricted area does not entail direct participation in hostilities. At the time of the demonstration on 15 May 2011, no hostilities between armed groups and IDF were taking place in the area. It is recalled that Israel has the obligation to conduct prompt, thorough, effective, independent and impartial investigations into all allegations of violations of the rights contained in the International Covenant on Civil and Political Rights that are alleged to have occurred during any demonstration.

Enforcement of the access-restricted areas

25. Israel continued to impose restrictions on Palestinians accessing areas located within Gaza up to 1,500 metres from the Green Line. Palestinians entering or getting close to these areas are regularly subjected to warning shots, and, in some cases, are directly targeted. According to United Nations figures, an estimated 23 civilians were killed in incidents in the access-restricted area on land during the reporting period.[34] OHCHR documented three of those incidents, which resulted in the killing of three Palestinian civilians. In two of the cases, OHCHR found no evidence to indicate that the victims were directly participating in hostilities or constituted any threat to the life of the soldiers stationed at the Green Line fence. On

[33] OHCHR monitored this case.

[34] Figures obtained from the Office for the Coordination of Humanitarian Affairs, 27 June 2011.

the contrary, the information gathered led to the conclusion that they had been targeted solely because of their presence within 1,500 metres from the fence.

26. For instance, on 10 January 2011, IDF soldiers stationed at the northern Green Line killed a 64-year-old farmer from Jabalia, with three bullets to his chest. The incident took place while the man was on his farm located around 450 metres from the fence. According to information collected by OHCHR, the situation at the time of the incident was calm, with no rocket or mortar fire, or shooting taking place.[35] Although IDF did not comment on this particular incident, they noted that rocket and mortar shells firing at Israel had been taking place since the beginning of 2011.[36]

27. During the reporting period, OHCHR documented 26 cases in which Palestinians were shot and injured while collecting rubble and scrap metal within a distance of between 200 and 1,000 metres from the fence. One such case occurred on 4 December 2010, when a 25-year-old Palestinian was shot in his right thigh by IDF fire while he was collecting rubble within 500 to 700 metres from the northern Green Line fence in Beit Lahia. A medical report indicates that the bullet entered and exited the right thigh.[37] The victim, interviewed by OHCHR, reported that no mortar shells or rockets were being fired at the time of the incident.[38] Another example is that of 26 February 2011, when IDF stationed at the northern Green Line fence shot and injured a 37-year-old Palestinian man while he was collecting rubble and scrap metal around 450 metres from the fence, also in Beit Lahia.[39] According to information received by OHCHR, no rocket or mortar shells had been fired from Beit Lahia that day.[40]

28. The Israeli navy continued to restrict the access of Palestinian fisherman to three nautical miles from the coast of the Occupied Palestinian Territory. This policy, enforced through the use of live ammunition, severely limited access to fishing grounds, and in some cases caused the death of civilians. On 24 September 2010, the Israeli navy shot at a Palestinian boat fishing 2,000 metres from the shore. According to information collected by OHCHR, three fishermen were on the boat when an Israeli vessel shot at them from a distance of 150 metres, injuring one fisherman. The Israeli navy allegedly neglected to help the victim, in particular, by offering medical assistance. The victim died of his wounds while being taken back to shore by other fishermen.[41]

29. Palestinian fishermen risk detention and confiscation of their boats by the Israeli naval forces. OHCHR documented three cases in which a total of 13 Palestinian fishermen were detained and their boats confiscated. In each case, the

[35] OHCHR monitored the case, and on 26 January 2011, visited the site of incident.

[36] Israeli sources mentioned over 20 rockets being fired in the first two weeks of 2011. See Israeli Defense Forces, "Islamic Jihad Operative Planning Massive Terror Attack in Israel Targeted in a Joint IDF-ISA Operation", available at http://dover.idf.il/IDF/English/Press+Releases/2011/01/1101.htm.

[37] OHCHR monitored the case.

[38] Ibid.

[39] Ibid.

[40] Department of Safety and Security communication dated 7 March 2011.

[41] OHCHR monitored the case. A request for information on this case was sent by OHCHR to the Government of Israel in December 2010. At the time of finalization of this report, no response had been received.

fishermen were within the three-nautical-mile limit, and, according to witnesses, posed no threat to the Israeli naval forces.

30. On 27 December 2010 a Palestinian boat with six fishermen, fishing within the three-nautical-mile limit, was intercepted by the Israeli naval forces. According to information collected by OHCHR, 30 to 40 masked Israeli soldiers in two Israeli boats intercepted the Palestinian boat and arrested the 6 fishermen on board. Although they were released the following day, their boat was confiscated and, at the date of finalization of the present report, was still being held. At least 100 persons (including 20 fishermen and their dependants) rely on this boat for their livelihood.[42]

31. In another case, on 3 January 2011, the Israeli navy intercepted a Palestinian boat within two nautical miles from the shore and arrested four fishermen. They were released on the same day, but their boat was confiscated by the Israeli naval forces and, as at the date of finalization of the present report, had not been returned.[43]

32. In a similar case, on 19 February 2011, the Israeli naval forces intercepted a boat less than three nautical miles from the Gaza shore and arrested three fishermen. A few hours later the men were released, but their boat was confiscated by the Israeli navy. The livelihoods of around 45 people (including the fishermen and their dependants) rely on that particular boat.[44]

33. The methods used to enforce the access-restricted areas imposed by Israel are not in conformity with international law; they are in violation of the rules on the use of force by law enforcement officials and incidents in which fishermen are killed constitute violations of the right to life. In the context of hostilities these enforcement methods violate the principle of distinction, which establishes that civilians are not to be targeted. Other enforcement methods are available, as demonstrated by the numerous detentions by Israel of Palestinian fishermen at sea. Furthermore, the confiscation of fishing boats constitutes a violation of article 46 of the Hague Regulations.[45]

B. Displacement and practices affecting the demographic composition of the Occupied Palestinian Territory

Residency rights in East Jerusalem

34. In 1967 Israel occupied the West Bank, including East Jerusalem, and purported to unilaterally change the municipal boundaries of Jerusalem, including by annexing East Jerusalem, in contravention of international law.[46] Palestinians who were at the time residing and physically present in East Jerusalem were designated permanent residents. "East Jerusalemites", as they are known, are issued identity documents that are different from those of Palestinians living in other areas of the West Bank, and are afforded permanent residency status in accordance with

[42] OHCHR investigated the case and interviewed the six fishermen on 13 March 2011.

[43] OHCHR monitored the case.

[44] OHCHR monitored the case.

[45] Regulations concerning the Laws and Customs of War on Land (Hague Regulations), annex to the 1907 Hague Convention respecting the Laws and Customs of War on Land.

[46] Security Council resolution 478 (1980).

the Entry into Israel Law.[47] This is the law that applies to foreign citizens who wish to live in Israel but do not immigrate to the country under the Law of Return. Israel therefore treats Palestinian residents of East Jerusalem as immigrants in the territory it occupies.[48]

35. During the reporting period, residents of East Jerusalem, whose families have been residents in Jerusalem for generations, continued to face uncertainty with respect to their status. Revocation of the residency status of East Jerusalemites has occurred since 1967. Palestinian residents of East Jerusalem can and do lose their permanent residency status if they reside outside Israel or East Jerusalem for a period of seven years, or if they obtain permanent residency or citizenship in another country.[49] The same restrictions do not apply to Israeli citizens, including those who live in settlements in East Jerusalem.

36. Residency status was also revoked in the case of four East Jerusalem residents on grounds of their lack of loyalty to the State of Israel, following their election in 2006 to the Palestinian Legislative Council. The basis for this revocation was that membership in the parliament of a hostile entity was incompatible with loyalty to Israel. In 2010 their identity cards were confiscated and they were told that they had 30 days to leave Jerusalem.[50] On 8 December 2010, Muhammad Abu Teir was forcibly transferred from East Jerusalem to another part of the West Bank by Israeli security forces.[51] The three other men sought refuge at the offices of the International Committee of the Red Cross in July 2010, where they remained as at the finalization of this report.

37. The requirement of "loyalty to the State of Israel," for East Jerusalem residents to maintain residency is analogous to compelling the residents of the occupied territory to swear "allegiance to the hostile power" which is prohibited by the Hague Regulations.[52] This requirement could potentially pose a risk to many Palestinian residents of East Jerusalem to revocation of their permanent residency status, including through the exercise of their right to freedom of expression and opinion and the prohibition of discrimination on political grounds, for example, when contesting Israeli policies or working for organizations deemed to be disloyal to Israel.[53] Regardless of the motive for revoking residency, article 49 of the Fourth Geneva Convention prohibits the forcible transfer of civilians of an occupied territory, except when necessary to ensure the security of the civilians involved.

38. In addition, it continues to be difficult to obtain permanent residency status permits, especially in cases of family unification, when East Jerusalemites are married to Palestinians from other parts of the West Bank or Gaza and wish to live

[47] Entry into Israel Law, 5712-1952.

[48] This policy is based on the *Mubarak Awad* case of the High Court of Justice, which decided that the status of Palestinian residents should be regulated in accordance with the Entry in Israel Law (5712-1952), which is immigration legislation. See, for example, Hamoked and B'Tselem, "The quiet deportation", April 1997, and "The quiet deportation continues", September 1998, p. 7, and *Mubarak Awad v Yitzhak Shamir et al.*, HCJ 282/88.

[49] Entry into Israel Regulations, 5734-1974, regulation 11(a).

[50] Between 2006 and 2010, the four men had been imprisoned for varying periods, on charges of affiliation with Hamas.

[51] United Nations Special Coordinator for the Middle East Peace Process, briefing to the Security Council, 14 December 2010.

[52] Article 45.

[53] A/HRC/16/71.

together in East Jerusalem. Since 2003, a freeze on family reunification has obstructed "mixed residency" marriages. The registration of the children of such couples as residents of East Jerusalem remains a long and arduous process.[54]

House demolitions and forced evictions

39. Demolition of buildings, including homes, and forced evictions continued to take place, in particular in Area C and East Jerusalem. During the reporting period, the Israeli authorities demolished a total of 504 structures in East Jerusalem and Area C. This comprised 149 residences in Area C, thereby displacing 820 people, including 374 children, and another 23 residences in East Jerusalem, which displaced 117 people, including 64 children.[55]

40. The Office for the Coordination of Humanitarian Affairs reported a sharp rise in the number of demolitions in the first half of 2011, which reportedly resulted in more Palestinians being already forcibly displaced in six months in 2011 than in all of 2010.[56]

41. For example, on 20 June 2011, IDF demolished six residential tents and a sanitary facility in southern Hebron, displacing eight families (68 people, including 45 children). The demolition was carried out following an order citing a lack of permits. A day later, in Al-Hadidiya, IDF demolished 29 structures, thereby displacing 27 people, including 11 children, from 6 households. Among the demolished structures were 7 residential tents, 18 animal barracks and pens, and 4 kitchens. Al-Hadidiya had already seen the demolition, on 10 June 2011, of one residential tent and three animal shelters, which affected 10 people. In that instance, several families had been prevented from removing their possessions, which were thus buried under the rubble.[57]

42. In the vast majority of cases houses are demolished owing to a lack of permits or during evacuations of Palestinians living in "closed military areas". Under human rights law, Israel has the obligation to ensure the right to adequate housing,[58] which includes security of tenure. According to the Israeli-Palestinian Interim Agreement, planning and zoning powers and responsibilities in Area C were to be gradually transferred to the Palestinian Authority.[59] Yet they are still retained by Israel, which should exercise its powers with due regard to human rights.[60] Israel as the occupying Power has failed to fulfil this obligation by not planning for housing and by not issuing a sufficient number of building permits over the past decades to respond to the needs of the Palestinian population (only 1 per cent of Area C[61] and 13 per cent of East Jerusalem[62] have plans that allow housing).

[54] Information provided by the Office for the Coordination of Humanitarian Affairs.

[55] Ibid.

[56] Office for the Coordination of Humanitarian Affairs, *Humanitarian Monitor*, June 2011, http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2011_07_20_english.pdf.

[57] Ibid.

[58] International Covenant on Economic, Social and Cultural Rights, art. 11.

[59] The Israeli-Palestinian Interim Agreement, 28 September 1995, annex III, art. 27.

[60] Ibid., art. XIX.

[61] Office for the Coordination of Humanitarian Affairs, *Humanitarian Monitor*, June 2011.

[62] Ibid., October 2010.

43. Demolition of homes in the occupied territory is prohibited under article 53 of the Fourth Geneva Convention, except when rendered absolutely necessary by military operations. No military operations have been ongoing in the West Bank for years. Demolition of houses and forced evictions also violate the right to adequate housing, as provided for in article 11 of the International Covenant on Economic, Social and Cultural Rights.

Bedouins

44. Bedouin refugees in the West Bank are struggling under the Israeli occupation. Their livelihood and food security, in particular in Area C, have been negatively affected by the expansion of Israeli settlements and "closed" areas (e.g. military zones, natural reserves). Over the last 30 years the Bedouin community has experienced gradual, systematic dispossession of its land. Today Bedouins face constant attempts to displace them from their homes and increasingly restricted access to natural resources.[63] In Wadi Abu Hindi and Al Matar, 80 Bedouin families living close to the Maale Adumim settlement are under imminent threat of forced displacement. Every Bedouin structure in those communities has a stop-work order from the Israeli Civil Administration (ICA), and a confiscation order has been reissued, indicating that the land they have inhabited for 60 years will be used for construction of the Wall. Recent ICA proposals to re-locate Bedouin communities from Area C into "purpose-built" villages are viewed with caution by the Bedouin communities, many of which have already been displaced on multiple occasions by the Israeli authorities.

C. Firing of rockets and mortars against Israeli civilian areas

45. Palestinian armed groups continued firing rockets and mortar shells at Israel. A total of 325 rockets, including homemade rockets, Grad rockets, and rocket-propelled grenades, and 389 mortar shells were fired during the reporting period.[64] While it was confirmed that 46 of the projectiles were directed at military objectives, the indiscriminate nature of the majority of them makes it impossible to determine the intended targets of the remaining ones. A significant number of the rockets and mortar shells landed in areas of Israel inhabited by civilians.

[63] UNRWA, *Bedouin Fact Sheet 2010*. 70 per cent of Area C is now restricted to Palestinians due to settlements, the barrier and its buffer zone, closed military areas and nature reserves. Due to the resulting restricted access to natural resources, the Bedouins' traditional pastoralist livelihood has reached a point of collapse. The ensuing poverty, coupled with movement restrictions, is severely hindering their access to basic services, including livestock markets. Food and water insecurity and spiralling debt cycles are prevalent, while alternative income-generating skills have not yet been developed, due to lack of access to both secondary and higher education which, in turn, negatively affects the Area C Bedouins' ability to compete in the Palestinian job market.

[64] According to Department of Safety and Security sources, communications dated 26 June and 9 July 2011.

46. On 7 April 2011, a guided anti-tank missile was fired from Gaza and hit a school bus driving near Sha'ar Hanegev Regional Council, southern Israel, leaving two Israelis wounded. A 16-year-old subsequently died as a result of injuries suffered from this attack.[65] Hamas claimed responsibility for the attack, stating that it had been carried out in revenge for the killing of three of its militant leaders on 2 April.[66] It stressed that the road the bus was travelling on was often used by Israeli military vehicles.[67] On 21 December 2010 a rocket fired from Gaza exploded near a kindergarten in Kibbutz Zikim while children were arriving,[68] injuring a 14-year-old girl.[69]

47. The firing of these rockets is contrary to the rules of international humanitarian law prohibiting indiscriminate attacks, the targeting of civilians, the use of inherently indiscriminate weapons and acts aimed at spreading terror in the civilian population.[70] In addition, it has been alleged by the Government of Israeli that such rockets and mortars are often fired from densely populated areas. Should this be the case, it would also contravene customary international humanitarian law.[71]

D. Restrictions on the freedom of movement and goods

Continued construction of the Wall

48. In 2004 the International Court of Justice, upon the request of the General Assembly, issued its advisory opinion *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, in which it concluded that the construction of the Wall in the Occupied Palestinian Territory and its associated regime contravene international law. It also concluded that Israel is obligated to cease construction of the Wall inside the Occupied Palestinian Territory, to dismantle the existing portions inside the Occupied Palestinian Territory, and to make reparations for all damage caused by the construction of the Wall.[72] Seven years later, Israel has yet to comply with the advisory opinion.

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[65] http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Two-injured-in-anti-tank-missile-attack-on-school-bus-7-Apr-2011.htm.

[66] CNN, 7 April 2011. Hamas claims responsibility for missile strike on bus that wounded boy, http://edition.cnn.com/2011/WORLD/meast/04/07/israel.gaza.violence/index.html. On 2 April 2011, Israeli occupation forces targeted three members of Izz El Din El Qassam Brigades in Dier El Balah, central Gaza Strip, leaving them dead. For this incident see Palestinian Center for Human Rights, Weekly report on Israeli Human Rights Violations in the Occupied Palestinian Territory (31 March-6 April 2011), http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=7369:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-31-march-06-april-2011&catid=84:weekly-2009&Itemid=183.

[67] Reuters, 9 April 2011. Hamas said on Saturday that its militants had not intended to target Israeli schoolchildren, http://www.reuters.com/article/2011/04/09/palestinians-israel-hamas-idUSLDE73807X20110409.

[68] http://dover.idf.il/IDF/English/Press+Releases/10/12/2501.htm.

[69] *Ynet*, 21 December 2011. Qassam explodes near kindergarten, http://www.ynetnews.com/articles/0,7340,L-4002195,00.html.

[70] These rules are identified in a Study on Customary international humanitarian law, International Committee of the Red Cross, rules 1, 2, 11 and 71.

[71] Ibid., rule 23.

[72] Advisory opinion of 9 July 2004, paras 142 and 150-153.

49. During the reporting period, construction of the barrier was minimal. However, the Wall continued to have a substantial negative impact on the human rights of Palestinians. As of July 2011 the Wall's total length was 708 kilometres, more than twice the length of the 1949 Armistice Line (Green Line) between the West Bank and Israel. Approximately 61.8 per cent of the Wall is complete; a further 8.2 per cent is under construction; and 30 per cent is planned but not yet constructed. If completed according to current plans, approximately 85 per cent of the Wall's route will be inside the West Bank rather than along the Green Line.[73]

50. Notably, on 21 June 2011, the Israeli authorities began dismantling a section of the Wall alongside Bil'in village. This followed a decision by the Israeli High Court, issued in February 2007, which ordered the re-routing of this section, owing to the disproportionate harm it caused to Palestinian farmers.[74] As a result of the re-routing, the village's residents will regain unrestricted access to around 1,020 dunums[75] of their agricultural land. However, as the new route is located some 3 kilometres east of the Green Line, it will leave another 1,280 dunums of Palestinian land isolated by the Wall.

51. The Israeli authorities also recently began re-routing a section of the Wall next to Khirbet Jubara village, following an Israeli court decision from 2007. When the old section is fully dismantled, over 300 residents of the village will be released from the "seam zone", the closed area located on the western side of the Wall between it and the Green Line. According to the village council, however, the new route will still isolate around 600 dunums of the village's agricultural land, planted with olive trees, which will remain behind the Wall. It is noted that the new Wall sections are still located in the Occupied Palestinian Territory in contravention of international law.

The blockade in Gaza

52. In June 2011, the blockade imposed by Israel entered its fifth year. The blockade continues to impede the rights to freedom of movement, work, health and adequate housing. The blockade also continues to severely restrict economic development in Gaza.

53. Movement through the Erez crossing remained restricted for almost all Palestinians residing in Gaza, apart from exceptional cases, which include medical emergencies and local staff of international organizations.[76]

54. The adjustment of regulations governing imports into Gaza, implemented by Israel since June 2010, has resulted in an increase in the availability of food stuffs and consumer goods during the reporting period. Yet this has not brought the necessary fundamental change in the level of Gaza's imports. As at the finalization

[73] Office for the Coordination of Humanitarian Affairs, Special Focus Barrier Update, "Seven years after the advisory opinion of the International Court of Justice on the Wall: the impact of the Barrier in the Jerusalem area" (July 2011).

[74] *Ahmed Issa Abdallah Yassin, Bil'in Village Council Chairman v. The Government of Israel et al*, HCJ 8414/05.

[75] 1 dunum is equivalent to 1,000 square metres.

[76] Office for the Coordination of Humanitarian Affairs, Humanitarian Situation in the Gaza Strip, July 2011, http://www.ochaopt.org/documents/ocha_opt_Gaza_Fact_Sheet_July_2011.pdf.

of this report, imports fell well short of Gaza's needs, representing only 45 per cent of the pre-2007 levels.[77]

55. Entry of building materials such as steel, aggregate and cement, continue to be restricted to a limited number of humanitarian and commercial projects approved by the Government of Israel. Entry of the same materials for private use remained officially banned.[78] Lack of access to construction materials has obstructed the reconstruction and reparation of houses damaged and destroyed during Operation Cast Lead.

56. At the same time, dozens of damaged schools and classrooms remained unrepaired as a result of the continued restrictions on the entry of building materials. This has forced an estimated 85 per cent of schools in Gaza to run on double or triple shifts.[79]

57. The blockade has continued to severely restrict Gaza's exports, notwithstanding the Israeli decision of 8 December 2010 to adjust export restrictions. As of the finalization of this report, Gaza exports represented only 5 per cent of the pre-2007 level.[80]

E. Arrests and detention

58. According to NGO sources, in June 2011, there were approximately 5,500 Palestinians from the Occupied Palestinian Territory in Israeli detention. That number includes 37 women and 211 children. The vast majority are held in prisons and detention centres located outside the occupied territory, in violation of international humanitarian law. The Fourth Geneva Convention provides that residents of an occupied territory are to be detained and serve sentences within the occupied territory.[81] In addition to contravening international law, holding Palestinian detainees outside the occupied territories creates problems for family members wishing to visit them. Entry permits to Israel are required and visits must be organized by the International Committee of the Red Cross. However, because of the blockade of Gaza, the approximately 650 prisoners and detainees from Gaza cannot receive family visits.

59. During the reporting period, administrative detentions by Israeli authorities continued. Of the total number of Palestinian detainees, approximately 220 were under administrative detention. Those detentions are authorized by military commanders rather than the judiciary and the detainees are often not informed of the charges against them. While they may appeal the detention order before a military court, this process is problematic, as the detainee and his or her lawyer do not have access to the information on which the detention is based. Administrative detentions raise serious concern with regard to Israel's obligations set out in articles 9 and

[77] Ibid.

[78] Norwegian Refugee Council, Shelter Sector: Gaza. Two Years After Operation Cast Lead. Fact Sheet 3, http://www.sheltergaza.org:8081/ussd/fr/Gaza%20Shelter%20Fact%20Sheet%203.pdf.

[79] Office for the Coordination of Humanitarian Affairs, Humanitarian Situation in the Gaza Strip, July 2011, http://www.ochaopt.org/documents/ocha_opt_Gaza_Fact_Sheet_July_2011.pdf.

[80] World Food Programme, Gaza: cased or un-cased: changes in Gaza market and household conditions following Israel's 20 June 2010 New Access Regime, http://www.wfppal.org/Foodsec/Eased%20or%20un-cased,%20WFP%20report%20June2011.pdf.

[81] Article 76, Geneva Convention IV of 1949.

14 of the International Covenant on Civil and Political Rights. While noting that Israel has formally derogated from article 9, the Human Rights Committee has recalled that measures which derogate from the Covenant must be temporary and limited to the extent strictly required. The Committee has expressed its concern at the frequent and extensive use by Israel of administrative detention, which infringes on the right to a fair trial.[82]

60. The arrest and detention of Palestinian children continued throughout the reporting period. As at June 2011, there were 211 children in prison and pre-trial detention. However those numbers do not reflect the much larger number of children arrested, interrogated and detained for short periods. For example, an Israeli NGO reported that, from 22 September 2010 to 31 October 2010, 32 children were arrested in a single neighbourhood of East Jerusalem.[83] The methods used to arrest children are problematic. There have been numerous reports of regular use of night-time raids to search for and detain children in the West Bank, including in East Jerusalem. Israeli police or IDF soldiers go to the houses in the middle of the night, wake up the targeted children and take them away for questioning.[84]

III. Recommendations

61. **The Government of Israel should take all necessary measures to prevent further incidents of excessive use of force. This should include a review of regulations on the use of live ammunition in operations carried out by all Israeli security forces, including the Israeli Defense Forces (IDF), to ensure that these regulations are in line with Israel's international legal obligations.**

62. **The Government of Israel should review methods used by IDF to enforce access restrictions on land and sea in Gaza. These methods should be consistent with Israel's international legal obligations, and should never include the use of live ammunition against civilians.**

63. **The Government of Israel should adopt measures that effectively ensure that any attack by IDF respects the principles of conduct of hostilities, namely distinction, proportionality and precautions. This should include having commanders in the field carefully evaluate the timing of attacks and the concrete and direct military advantage expected to be gained from responding immediately to the launch of a rocket or mortars, when appropriate means are not available which would to mitigate the risk to civilians.**

64. **The Government of Israel must ensure the accountability of members of its security forces, in particular by conducting investigations that meet international standards of promptness, independence, impartiality, and thoroughness into all credible allegations of violations.**

65. **Palestinian armed groups must comply with international humanitarian law and immediately cease the firing of indiscriminate rockets and mortars. Palestinian armed groups should seek to protect the civilian population of**

[82] Human Rights Committee, Concluding observations on Israel, CCPR/C/ISR/CO/3, para. 7.

[83] B'Tselem, *Caution Children Ahead: The Illegal Behavior of the Police towards Minors in Silwan Suspected of Stone Throwing*, December 2010.

[84] See, for example, Defence for Children International, Palestine Section, The administration of occupation http://www.dci-pal.org/english/display.cfm?DocId=1802&CategoryId=1.

Gaza, in particular by abstaining from locating military objectives in densely populated areas.

66. **The Government of Israel must end its policies resulting in the forcible transfer of civilians in the Occupied Palestinian Territory. In this connection, Israel should desist from revoking the residency status of East Jerusalemites.**

67. **The Government of Israel's policies and practices that lead to forced displacement of Bedouin refugees from Area C, including demolitions of homes and livelihood structures, should cease. Any attempts to relocate Bedouin communities into "purpose-built" villages should only be carried out with the free, prior and informed consent of the Bedouin. Further, Israel should respect the rights of Bedouin communities to access natural resources and essential services.**

68. **The Government of Israel should immediately cease all demolitions of houses and other structures in the Occupied Palestinian Territory. At the same time, Israel should modify applicable planning and zoning rules, in order to ensure adequate housing for all Palestinian residents of Area C and East Jerusalem.**

69. **The Government of Israel should fully comply with the advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, in particular by immediately halting the construction of the barrier and dismantling or rerouting the constructed section to the Green Line.**

70. **The Government of Israel should fully lift the blockade of Gaza, with due regard for legitimate security concerns. The lifting of the blockade should include permitting the exportation of goods, ensuring that all necessary reconstruction materials can be delivered, and facilitating the movement of people to and from Gaza.**

71. **Taking into account the observations of the Human Rights Committee, the Government of Israel should conduct an independent and thorough review into its policy of administrative detention, with a view to terminating the policy and removing its derogation regarding article 9 of the International Covenant on Civil and Political Rights.**